

AMENDED IN SENATE AUGUST 24, 2012

AMENDED IN SENATE JULY 2, 2012

AMENDED IN SENATE JUNE 19, 2012

AMENDED IN SENATE JUNE 7, 2012

AMENDED IN SENATE MAY 14, 2012

AMENDED IN ASSEMBLY MAY 27, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 861

Introduced by Assembly Member Hill

February 17, 2011

An act to amend Sections 2110 and 2111 of, and to add Section ~~451.6~~
746 to, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 861, as amended, Hill. Public Utilities Act: remedies for violation: gas and electrical corporation executive officer compensation incentives.

(1) The California Constitution establishes the Public Utilities Commission, with regulatory jurisdiction over all public utilities, as defined. The Public Utilities Act provides that every public utility and every officer, agent, or employee of a public utility, who violates or fails to comply with, or who procures, aids, or abets any violation by any public utility of any provision of the California Constitution or of the act, or who fails to comply with any part of any order, decision, rule, direction, demand, or requirement of the commission, or who procures, aids, or abets any public utility in a violation or noncompliance, in a case in which a penalty has not otherwise been

provided, is guilty of a misdemeanor and is punishable by a fine not exceeding \$1,000, or by imprisonment in a county jail not exceeding one year, or by both fine and imprisonment.

This bill would provide that the fine may not exceed \$5,000.

(2) The act additionally provides that every corporation or person, other than a public utility and its officers, agents, or employees, knowingly violating or failing to comply with, or procuring, aiding, or abetting any violation of the California Constitution relating to public utilities or of the act, or that fails to comply with any part of any order, decision, rule, direction, demand, or requirement of the commission, or procuring, aiding, or abetting any public utility in a violation or noncompliance, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than \$500, or more than \$20,000, for each offense.

This bill would increase the maximum penalty to not more than \$50,000 for each offense.

(3) Existing law authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable. Existing law requires that any expense resulting from a bonus paid to an executive officer, as defined, of a public utility that has ceased to pay its debts in the ordinary course of business, be borne by the shareholders of the public utility and prohibits any expense from being recovered in rates.

~~This bill would require that any expense resulting from an earnings- or stock price-based incentive program paid to an employee or director of an electrical or gas corporation that is a public utility be borne by the shareholders of the public utility and would prohibit any expense from being recovered in rates. Because this provision of the bill would be a part of the act and because a violation of an order or decision of the commission implementing this requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime~~ *the commission to determine the appropriate ratemaking treatment for incentive compensation paid to officers or employees of an electrical corporation or gas corporation for incentive compensation that is linked to the stock price or financial performance of the electrical corporation or gas corporation.*

~~(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~yes~~ *no*.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 451.6 is added to the Public Utilities~~
2 ~~Code, to read:~~

3 ~~451.6. Any expense resulting from an earnings- or stock~~
4 ~~price-based incentive program paid to an employee or director of~~
5 ~~an electrical corporation or a gas corporation that is a public utility~~
6 ~~shall not be recoverable either directly or indirectly in rates and~~
7 ~~shall be borne exclusively by the shareholders of the public utility.~~

8 ~~SECTION 1. Section 746 is added to the Public Utilities Code,~~
9 ~~to read:~~

10 ~~746. The commission shall determine the appropriate~~
11 ~~ratemaking treatment for incentive compensation paid to officers~~
12 ~~or employees of an electrical corporation or gas corporation for~~
13 ~~incentive compensation that is linked to the stock price or financial~~
14 ~~performance of the electrical corporation or gas corporation.~~

15 ~~SEC. 2. Section 2110 of the Public Utilities Code is amended~~
16 ~~to read:~~

17 ~~2110. Every public utility and every officer, agent, or employee~~
18 ~~of any public utility, who violates or fails to comply with, or who~~
19 ~~procures, aids, or abets any violation by any public utility of any~~
20 ~~provision of the California Constitution or of this part, or who fails~~
21 ~~to comply with any part of any order, decision, rule, direction,~~
22 ~~demand, or requirement of the commission, or who procures, aids,~~
23 ~~or abets any public utility in the violation or noncompliance in a~~
24 ~~case in which a penalty has not otherwise been provided, is guilty~~
25 ~~of a misdemeanor and is punishable by a fine not exceeding five~~
26 ~~thousand dollars (\$5,000), or by imprisonment in a county jail not~~
27 ~~exceeding one year, or by both fine and imprisonment.~~

28 ~~SEC. 3. Section 2111 of the Public Utilities Code is amended~~
29 ~~to read:~~

30 ~~2111. Every corporation or person, other than a public utility~~
31 ~~and its officers, agents, or employees, which or who knowingly~~
32 ~~violates or fails to comply with, or procures, aids or abets any~~
33 ~~violation of any provision of the California Constitution relating~~

1 to public utilities or of this part, or fails to comply with any part
2 of any order, decision, rule, direction, demand, or requirement of
3 the commission, or who procures, aids, or abets any public utility
4 in the violation or noncompliance, in a case in which a penalty has
5 not otherwise been provided for the corporation or person, is
6 subject to a penalty of not less than five hundred dollars (\$500),
7 nor more than fifty thousand dollars (\$50,000) for each offense.

8 ~~SEC. 4. No reimbursement is required by this act pursuant to~~
9 ~~Section 6 of Article XIII B of the California Constitution because~~
10 ~~the only costs that may be incurred by a local agency or school~~
11 ~~district will be incurred because this act creates a new crime or~~
12 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
13 ~~for a crime or infraction, within the meaning of Section 17556 of~~
14 ~~the Government Code, or changes the definition of a crime within~~
15 ~~the meaning of Section 6 of Article XIII B of the California~~
16 ~~Constitution.~~